

NEBRASKA DEPARTMENT
OF INSURANCE

APR 06 2000

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE BY
JOHN W. NEMEC

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) RECOMMENDED ORDER,
) AND ORDER
)

) CAUSE NO. A-1397
)

This matter came on for hearing on the 23th day of March, 2000, before Linda R. Sanchez-Masi, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance agent license. The Nebraska Department of Insurance ("Department") was represented by Jennifer Stehlik Ladman, senior certified law student authorized to represent the Department, and Manuel Montelongo, supervising attorney for the Department. John W. Nemec ("Applicant") was not present and was not represented by an attorney. The proceedings were tape recorded by Stacey Bellefeuille, a licensed Notary Public. The Rules of Evidence were not requested and the hearing was governed accordingly. Evidence was presented by the Department, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.
2. On or about August 26, 1999, as evidenced by Exhibit #4, Applicant applied for a motor club insurance license.
3. Applicant's address of residence as listed on the application is 1136 S. 29th Street,

Apartment 1, Omaha, Nebraska 68105.

4. On or about September 16, 1999, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, as evidenced by Exhibit #6, notified Applicant that his application for a motor club insurance license was denied based upon Neb.Rev.Stat. §44-4026(4) and (5).

5. On or about February 24, 2000, Applicant requested a hearing, pursuant to Neb.Rev.Stat. §44-1234, to appeal the decision to deny a motor club insurance license by the Department.

6. The Notice of Hearing was served upon the Respondent by mailing the same to his address of record by certified mail, return receipt requested. The Notice of Hearing with the return receipt was delivered to Respondent on or about March 6, 2000, as evidenced by Exhibit #2.

7. On or about March 6, 2000, Beverly Creager, Licensing Administrator for the Nebraska Department of Insurance, as evidenced by Exhibit #5, advised Applicant that the initial denial of the license application was made in error. The application for the motor club insurance license was denied pursuant to Neb.Rev.Stat. §44-3716(2)(b), which requires that a "club representative shall...(b) be a trustworthy person of good reputation...."

7. As evidenced by Exhibit #5, Applicant disclosed on his license application a 1994 conviction for two counts of unlawful delivery of a controlled substance. Applicant was fined and put on three years probation. On or about October 17, 1996, The District Court of Douglas County, Nebraska waived the last ninety (90) days of Applicant's probation.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance agents and brokers to sell insurance in the State of Nebraska pursuant to Neb.Rev.Stat.

§44-101.01 and §44-4001 et seq.

2. The Department has personal jurisdiction over Applicant.

3. Although the past conviction for unlawful delivery of a controlled substance does constitute a sufficient basis for denying Applicant a license, consideration must be given to the fact that no legal action has been taken against Applicant prior to or since December of 1994; that the Applicant was found to have been sufficiently rehabilitated after his 1994 conviction to be released early from probation; and that Applicant has found employment with Cornhusker Motor Club.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director grant Applicant's limited request for a motor club insurance agent's license. It is also recommended to the Director that Applicant's insurance agent's license be restricted to the line of Motor Club, for a period of two (2) years beginning thirty (30) days from the date the Director signs this *Findings of Fact, Conclusions of Law, Recommended Order, and Order*.

Dated this 5th day of April, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


Linda R. Sanchez-Masi
HEARING OFFICER

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order, and hereby certify that the Recommended Order is adopted as the official and final Order of this Department In The Matter Of The Denial Of Application For License By John W. Nemec, Cause No. A-1397.

Dated this 6th day of April, 2000.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to Applicant at 1136 South 29th Street, Omaha, Nebraska 68105 by certified mail, return receipt requested on this 6th day of April, 2000.

